

## PROBATE AND ESTATES

The Clerk of the Circuit Court acts as Probate Judge to probate wills and qualify personal representatives. Copies of probate records may be obtained in the Record Room.

### FORM TO REQUEST PROBATE/QUALIFICATION:

#### WILLS – PROBATE – ESTATE

Clerk, Circuit Court of  
Fauquier County  
40 Culpeper St.  
Warrenton, Va . 20186

If an individual wishes to probate a will and request certification as personal representative, certain information must be provided to complete the required forms. A request for probate or qualification as personal representative must be filed in the City or County where the decedent resided. **The Clerk will also need to have the original will and a certified copy of the death certificate.** Once the required information has been filed, the probate clerk will schedule an appointment for the personal representative to appear and sign the necessary forms. At the time of the appointment, the Clerk will collect probate taxes (which are not the same as inheritance taxes) and fees based on the value of the estate.

#### 1. Probate Information:

Name of Decedent (as shown on will, if any)	
_____	
Decedent's Residence Address: _____	
_____	
Date of Birth: _____	Marital Status: _____
Date of Death: _____	Place of Death: _____
Name & Address of Personal Representative(s): _____	
_____	
_____	
_____	
Phone Number(s) _____	

2. Value of Estate: Please show the estimated value of any estate the decedent had an interest in. You do not need to include assets held with right of survivorship for the purpose of this form.

Personal Property	\$ _____
Real Estate located	
In Virginia:	\$ _____

Personal Property includes the following: stocks, bonds, currency and coin, bank accounts (checking, savings, etc.), brokerage firm accounts, furniture, silver, crystal, automobiles, boats,

firearms, notes of debts owed to deceased person, interests in any businesses, money or assets due the deceased person from another estate, and life insurance, annuity contracts or retirement plans payable to the estate.

### 3. List of Heirs:

Please provide a list of the names, ages, and addresses of the heirs (next of kin). The surviving spouse, if any, should be listed first. Children should be listed if the decedent left no spouse or if the decedent had children by anyone other than the surviving spouse. (The heirs may be different from the beneficiaries named in the will.) Refer to Section 64.1-1 of the Code of Virginia for additional information.

<u>Name</u>	<u>Address</u>	<u>Relationship</u>	<u>Age</u>

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Once the Clerk has reviewed the information provided, the will, and the death certificate, the Clerk will advise you if the will is properly executed for probate and if a secured bond is required for qualification as personal representative.

The probate clerk will assist you with the probate procedures but cannot provide you with the legal or accounting advice that you may need to settle an individual estate. You may wish to contact an attorney, a financial advisor, such as a bank or trust department or trust company, or an accountant to assist you in the distribution of the estate.

If you are appointed and qualify as personal representative of the estate, the Clerk will provide you with certificates of qualification to transfer the assets in the estate, instructions on filing your inventory and accounting with the Commissioner of Accounts, and the inventory and accounting forms.

**NOTE TO ATTORNEYS OR Other Estate Advisors:** Please submit the Probate Information Form (CC-1650), Probate Tax Return (CC-1651) and List of Heirs (CC-1611) along with the will and death certificate prior to requesting a probate appointment for your client.

### TOP RULES FOR FIDUCIARIES:

Your duties as a personal representative are set by law. Below are some important rules to assist you as you fulfill your duties; these aren't the only rules but are the more important ones. If you are a conservator or trustee of a trust, there are additional special rules on investing and spending the money you hold, and you should consult an experienced attorney for those.

1. **KEEP MONEY SEPARATE.** DO NOT deposit any estate money in your account or use estate money to pay your bills—Criminal penalties could happen if you do. Open an estate account at a bank for all estate funds.
2. **GET CANCELED CHECKS FROM THE BANK.** You must file an “Accounting” (a detailed statement of everything that you got and paid) with the Commissioner of Accounts. You have to prove that someone actually received the money you say you paid. **THE ORIGINAL CANCELED CHECKS ARE REQUIRED**, and if your bank says it can’t do this, *go to another bank*. If you don’t get canceled checks, then at your personal expense you’ll have to get other proof approved by the Commissioner.
3. **CAREFULLY DETAIL ALL MONEY** that comes in or goes out. For EACH item, you need to write down WHEN- WHO-WHAT/WHY-HOW MUCH. Example: If you get a \$2.00 check from an insurance company, you need the WHEN (date you got it), WHO (name of insurance company), WHAT/WHY (payment on medical treatment or refund on premium) and HOW MUCH (the exact amount of the check). If you can, photocopy all checks before depositing them to the estate account.
4. **KEEP RECORDS.** Get a medium sized spiral notebook and use it as a diary. In it write everything you do in handling the estate you are in charge of-who you talk to, what was said, what was done. For money, the checkbook register **MUST** be accurate. (Hint: Put money transactions in BOTH the notebook AND the checkbook register).
5. **GET RECEIPTS.** If you give someone personal property, you have to prove to the Commissioner that they got it and what it was worth. A receipt is the best way to do this.
6. **DON’T PAY BILLS AND DEBTS TOO QUICKLY.** If there's not enough money in the estate, you can be personally responsible if you overpaid creditors. **THIS INCLUDES THE FUNERAL BILL.** There are laws that say who is entitled to what payment when, and if you think there may not be enough money to pay everything, consult an attorney.
7. **ASK QUESTIONS.** There are strict and detailed rules for handling someone else’s money; few people have experience doing it. Find a lawyer experienced in this area and use him/her as a resource. Asking a stupid question is a lot cheaper than making a stupid mistake.
8. **KEEP ON TIME & USE THE FORMS.** Your inventory is due at the Commissioner’s Office in 4 months; your statement of account is due in 16 months, or 6 months if you are guardian or conservator. You will have to

pay a penalty personally if it's late. There are special forms and report formats the Court requires you to follow; use them AND **Black Ink**.

9. **TAKE CARE OF TAXES.** You are responsible for making sure all taxes are paid on time. If you're not sure what to do, get an accountant to help you.
10. **Get A SPECIAL TAX ID NUMBER.** (decedent's estates and trusts). An estate is a different person from the person who passed away. IRS laws require a new Tax ID number. The good news is that the IRS makes this really easy to do.
11. **DON'T DISTRIBUTE TOO FAST** (or too slow). The heirs of the estate want their money yesterday. Virginia law doesn't make you distribute for a year. If you give money to someone too early, and something happens that you need it back, you are legally responsible for it.
12. Send notice to heirs and beneficiaries within 30 days, if required, and file affidavit with the Clerk's Office listing recipients of said notice or stating why notice was not required.